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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ELMER DWAYNE JAMES,
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14 vs.
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16 MATTHEW CATE, Secretary,
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18 Respondent.
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CASE NO. 11-CV-1910 - IEG (NLS)

ORDER:

**(1) ADOPTING IN FULL REPORT
AND RECOMMENDATION;**

[Doc. No. 18]

**(2) DENYING PETITION FOR
WRIT OF HABEAS CORPUS; AND**

[Doc. No. 1]

**(3) DENYING CERTIFICATE OF
APPEALABILITY**

20 Before the Court is Petitioner Elmer Dwayne James's Petition for Writ of Habeas Corpus
21 pursuant to 28 U.S.C. § 2254 ("the Petition"). [Doc. No. 1.] Petitioner was convicted of first
22 degree robbery in San Diego County Superior Court and sentenced to five years in state prison.
23 [Id. at 2-3.] He claims that his appointed counsel's failure to object to or appeal the decision at
24 trial not to grant immunity to a prospective defense witness violated his Sixth Amendment right to
25 the effective assistance of counsel. [Id. at 6.]

26 The Court referred the matter to Magistrate Judge Nita L. Stormes, who issued a Report
27 and Recommendation ("R & R") recommending that the Petition be denied. [Doc. No. 18.] The R
28 & R concludes that the Petition should be denied because the sole claim presented is procedurally
defaulted and without merit. [See id. at 2.] The time for filing objections to the R & R expired on

July 31, 2012. [*See id.* at 28] Petitioner has not filed any objections.

DISCUSSION

The Court reviews *de novo* those portions of the R & R to which objections are made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* However, “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original). “Neither the Constitution nor the statute requires a district judge to review, *de novo*, findings and recommendations that the parties themselves accept as correct.” *Id.*


In this case, the time for filing objections to the R & R passed over a month ago and Petitioner has not filed any objections. Accordingly, the Court may adopt the R & R on that basis alone. *See id.* Having reviewed the Petition, Respondent’s Answer, [Doc. No. 17], and the R & R, the Court hereby approves and **ADOPTS IN FULL** the R & R. *See* 28 U.S.C. § 636(b)(1).

CONCLUSION

Having reviewed the R & R and there being no objections, the Court **ADOPTS IN FULL** the R & R and **DENIES** the Petition. The Court also **DENIES** a certificate of appealability because Petitioner has not “made a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED: September 13, 2012


IRMA E. GONZALEZ
 United States District Judge